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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/521,769	03/09/2000	Peter C Johnson	99-40165-US	3731
45607	7590	01/26/2006	EXAMINER	
HOWREY LLP C/O IP DOCKETING DEPARTMENT 2941 FAIRVIEW PARK DRIVE SUITE 200 FALLS CHURCH, VA 22042			MORAN, MARJORIE A	
			ART UNIT	PAPER NUMBER
			1631	

DATE MAILED: 01/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/521,769	JOHNSON, PETER C	
	Examiner	Art Unit	
	Marjorie A. Moran	1631	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 November 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,5 and 7-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,2,5 and 7-9 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/10/05.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

Information Disclosure Statement

The information disclosure statement filed 11/10/05 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but all of the information referred to therein has not been considered. No copy of USSR 974,977 has been filed. Only the initialed references have been considered.

Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

Claim Rejections - 35 USC § 112

The rejections under 35 USC 112 are hereby withdrawn in view of the claim amendments filed 11/10/05.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-2, 5, and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over LUSSIER (US 5,130,545).

Applicant's arguments filed 11/10/05 have been fully considered but they are not persuasive. In response to the argument that LUSSIER does not teach obtaining a sample of raw product from a plant to be analyzed, it is noted that as a "sample" is not limited to be any specific portion of a plant, any percentage, or size, etc., an entire plant may be a "sample." Further, LUSSIER specifically teaches scanning a single leaf from a plant in col. 5, lines 63-col. 6, line 12, and exemplifies doing so in Figure 3. In response to the argument that LUSSIER does not teach providing a plurality of product processing records, it is noted that applicant admits on page 5 of the response that LUSSIER does teach providing stored records comprising data for product (plant) growth, productivity and health. As plant growth habits and health are certainly indices "associated with" product processing (e.g. growth and harvesting of the plants), the examiner maintains that LUSSIER's stored records are broadly and reasonably interpreted to be the "plurality of product processing records" recited in step (c) of claim 1. In response to the argument that LUSSIER does not teach determining suitability of a sample for "derivative use" as set forth on page 5 of the response, applicant is reminded that a "derivative use" is not recited in the claims. Instant claim 1 merely recites determining the suitability of samples for processing into a uniform quality end product. It is noted that further growth (e.g. from seedling to mature flower) may be considered a form of "processing" wherein the "uniform quality end product" is the mature specimen (flower, tree, etc.), thus the examiner maintains that determining the

overall health and quality of a plant, as taught by LUSSIER, is a determination of the suitability of a plant for processing into a uniform quality end product. As previously set forth, LUSSIER teaches that a desired goal of his method is optimized plant growth, thus the examiner maintains that LUSSIER does at least suggest selecting plants, which when "processed", provide a uniform quality end product.

For the reasons set forth above, and the reasons and motivations previously set forth, the examiner maintains that LUSSIER teaches and/or suggests all of the claimed limitations, and maintains the rejection.

Conclusion

No claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marjorie A. Moran whose telephone number is (571) 272-0720. The examiner can normally be reached on Mon,Wed: 7-1:30; Tue,Thur: 7:30-6; Fri 7-3:30 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on (571)272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marjorie A. Moran
Primary Examiner
Art Unit 1631

Marjorie A. Moran
11/23/04